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Economic and Social Council

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Commission on Crime Prevention and Criminal Justice
Twenty-third session
Vienna, 12-16 May 2014
Agenda item 5
Integration and coordination of efforts by the United Nations Office on Drugs and Crime and Member States in the field of crime prevention and criminal justice

Argentina, Australia, Italy, Mexico, Turkey and Uruguay: revised draft resolution

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the adoption of the following draft resolution:

Strengthening international cooperation in addressing the smuggling of migrants

The Economic and Social Council,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Expressing its deepest concern over the negative impact of the smuggling of migrants on society and the rule of law and over the fact that individual migrants have lost their lives in dangerous smuggling operations, and commending all those who have dedicated themselves to protecting and assisting smuggled migrants, whose lives or safety are endangered by reason of being the object of such conduct,

Expressing its deepest concern also about the increase in the activities of transnational and national organized criminal entities and others that profit from the smuggling of migrants, especially women and children, and related offences,

Recalling General Assembly resolutions 66/128 of 19 December 2011, entitled "Violence against women migrant workers", 66/172 of 19 December 2011, entitled "Protection of migrants", 67/185 of 20 December 2012, entitled "Promoting efforts to eliminate violence against migrants, migrant workers and their families", 67/219 of 21 December 2012, entitled "International migration and development", 68/4 of 3 October 2013, entitled "Declaration of the High-level Dialogue on International

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Migration and Development", and 68/193 of 18 December 2013, entitled "Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity",

Recognizing that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, and also recognizing that this cross-cutting phenomenon should be addressed in a coherent, comprehensive and balanced manner, while respecting human rights and integrating development aspects, with due regard for social, economic and environmental dimensions,

Underlining the challenges posed by the smuggling of migrants by land, sea and air, as illustrated by events at the global level,

Bearing in mind the obligations of States under applicable international law to exercise due diligence to prevent and combat the smuggling of migrants and to investigate and punish perpetrators, notwithstanding the obligation of States to protect the rights and respect the dignity of smuggled migrants under applicable international law,

Recognizing the sovereign right of States to enact and implement migration and border security measures, without prejudice to applicable international commitments in relation to the free movement of people,

Recognizing also the need for more effective international information-sharing, law enforcement cooperation and mutual legal assistance to prevent and combat the smuggling of migrants,

Recalling that migrants shall not be liable to criminal prosecution under the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime[1] for the fact of having been the object of conduct set out in article 6 of the Protocol, and that nothing in the Protocol prevents a State party from taking measures against a person whose conduct constitutes an offence under its domestic law,

Bearing in mind the need for a focused and consistent criminal justice approach to the smuggling of migrants and related offences,

Underlining that, although the crime of smuggling of migrants may share, in some cases, some common features with the crime of trafficking in persons, Member States need to recognize that they are distinct crimes requiring separate and complementary legal, operational and policy responses,

Welcoming the work and tools of the United Nations Office on Drugs and Crime in the framework of the global programme against the smuggling of migrants, including the *Model Law against the Smuggling of Migrants*, the *International Framework for Action to Implement the Smuggling of Migrants Protocol* and the *Assessment Guide to the Criminal Justice Response to the Smuggling of Migrants*,

Taking note of the launch by the United Nations Office on Drugs and Crime of the Voluntary Reporting System on Migrant Smuggling and Related Conduct as a secure solution for collecting, sharing and analysing information on the smuggling

[1] United Nations, *Treaty Series*, vol. 2241, No. 39574.

of migrants, in support of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime,

Recalling that the theme of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in Doha from 12 to 19 April 2015, will be "Integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation",

1. *Underlines* the need to address challenges related to the smuggling of migrants through a comprehensive and balanced approach, and through bilateral, regional and international cooperation and dialogue, as appropriate, between countries of origin, transit and destination;

2. *Stresses* the importance of enhancing preventive measures, combating criminal networks and improving border control management, without prejudice to applicable international commitments in relation to the free movement of people;

3. *Highlights* the need to promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socioeconomic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socioeconomic causes of the smuggling of migrants, especially those related to poverty;

4. *Underlines* that international cooperation to prevent and combat the smuggling of migrants implies a common and shared responsibility among Member States;

5. *Also underlines* the crucial role of the United Nations Convention against Transnational Organized Crime[2] and of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,[3] as the primary international legal instruments to combat the smuggling of migrants and related conduct;

6. *Takes note with appreciation* of the increasing level of adherence to the Smuggling of Migrants Protocol and, on the tenth anniversary of its entry into force, urges States parties to implement it fully, and encourages States that have not done so to consider ratifying or acceding to the Protocol;

7. *Urges* Member States, where appropriate, to adopt measures to increase public awareness of the fact that the smuggling of migrants is a criminal activity frequently perpetrated by organized criminal groups for profit, posing serious risks to the migrants concerned;

8. *Stresses* the need to develop national and, as appropriate, regional policies and strategies against the smuggling of migrants and to reinforce international cooperation for the prevention of the crime and for the prosecution of smugglers, in accordance with national laws and legislation;

9. *Encourages* Member States to adopt relevant measures, including, if necessary, reviewing relevant legislation, including criminal laws and legislation,

[2] Ibid., vol. 2225, No. 39574.
[3] Ibid., vol. 2241, No. 39574.

and to criminalize the acts covered by the Organized Crime Convention and the Smuggling of Migrants Protocol, including by introducing appropriate sanctions commensurate with the nature and gravity of the offence;

10. *Urges* Member States, as appropriate, to avail themselves of the international cooperation framework provided by the Organized Crime Convention, the Smuggling of Migrants Protocol and other applicable international legal instruments, in order to ensure that they have an adequate legal framework to allow for extradition, mutual legal assistance and other cooperation tools in relation to such crimes;

11. *Encourages* Member States to cooperate with each other and with relevant international organizations to the fullest extent possible, in accordance with articles 18 and 19 of the Smuggling of Migrants Protocol and applicable obligations under relevant international law;

12. *Also encourages* Member States to ensure that, in investigating and prosecuting the smuggling of migrants, the concurrent undertaking of financial investigations is considered, with a view to tracing, freezing and confiscating proceeds acquired through that crime, and to consider the smuggling of migrants to be a predicate offence of money-laundering;

13. *Further encourages* Member States to take measures to protect witnesses in cases of smuggling of migrants as called for in the Organized Crime Convention, to take appropriate measures to provide for the effective protection of witnesses who testify in criminal proceedings and, as appropriate, their relatives, including protection from potential retaliation, and to strengthen international cooperation in this area;

14. *Encourages* Member States to promote the reliable collection of data and research, at the national and, as appropriate, the regional and international levels, on the smuggling of migrants, including on smuggling networks and the involvement of organized crime in countries of origin, transit and destination, and on the possible links that may exist between smuggling of migrants and other criminal activities;

15. *Also encourages* Member States to consider strengthening multi-agency cooperation and coordination at the national, bilateral and, where appropriate, regional levels, and to consider, if necessary, the establishment of multi-agency centres for the purpose of data collection, strategic analysis and information-sharing in order to detect, prevent and combat the smuggling of migrants, in accordance with national legislation;

16. *Further encourages* Member States to exchange information, as appropriate, on best practices to promote cooperation to prevent and combat the smuggling of migrants and coordination to investigate and prosecute the smuggling of migrants, in accordance with applicable domestic and international law;

17. *Encourages* Member States to use existing channels for information exchange, such as those provided by the International Criminal Police Organization (INTERPOL), to exchange information, in a manner consistent with domestic law, including information on persons convicted or suspected of conducting or facilitating the smuggling of migrants;

18. *Notes* the roles and responsibilities of countries of origin, transit and destination in protecting the rights of smuggled migrants and the need to avoid approaches that might aggravate their vulnerability, and reaffirms the need to effectively protect the rights and respect the dignity of smuggled migrants and internationally recognized principles of non-discrimination and other applicable obligations under relevant international law, taking into account the special needs of women and children, especially unaccompanied children;

19. *Stresses* the primary role of the State in overcoming the challenges posed by the smuggling of migrants, and recognizes the important contribution of non-governmental organizations, other relevant organizations and other elements of civil society in protecting and assisting smuggled migrants;

20. *Invites* Member States to fully utilize all relevant tools developed by the United Nations Office on Drugs and Crime within the global programme against the smuggling of migrants and the relevant regional and national programmes, including the Sharing Electronic Resources and Laws against Organized Crime knowledge management portal, and also invites Member States to provide to the Secretariat legislation and case law related to the smuggling of migrants, for inclusion in that knowledge management portal;

21. *Also invites* Member States, though bilateral, regional and international cooperation, where appropriate, to collaborate to prevent and combat the smuggling of migrants through the provision of assistance, including technical assistance, upon request, with a view to building capacities and enhancing abilities to prevent and combat the smuggling of migrants;

22. *Encourages* Member States to provide specialized training for law enforcement, immigration and border control officials and coastguard personnel, as well as forensic experts, prosecutors and judges, so that they are better able to recognize and deal with issues related to the smuggling of migrants;

23. *Encourages* the United Nations Office on Drugs and Crime to continue providing, upon request, technical assistance aimed at strengthening the capacity of Member States to criminalize, investigate and prosecute the smuggling of migrants, and invites Member States to consider and to draw upon the *International Framework for Action to Implement the Smuggling of Migrants Protocol* and the *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*[4] and the *In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants*;

24. *Requests* the United Nations Office on Drugs and Crime to strengthen collaboration and cooperation with all relevant bodies, agencies, funds and programmes of the United Nations system, other relevant intergovernmental, regional and subregional organizations, including Global Migration Group members, within their respective mandates, in order to adopt a coherent, comprehensive and coordinated approach and thus to fully address the challenges posed by the smuggling of migrants;

25. *Encourages* Member States to make the best use of the relevant work and initiatives of the institutes of the United Nations crime prevention and criminal

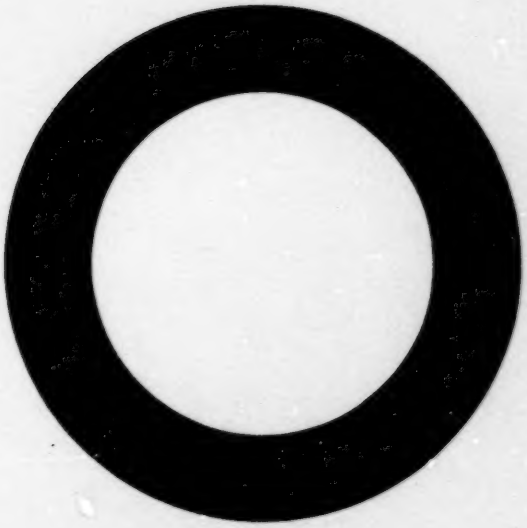
[4] United Nations publication, Sales No. E.10.IV.7.

justice programme network in order to promote regional and international cooperation against the smuggling of migrants;

26. *Encourages* Member States and the United Nations Office on Drugs and Crime to promote cooperation on the most effective ways to prevent and combat the smuggling of migrants, in view of, among other things, the workshop on the topic "Trafficking in persons and smuggling of migrants: successes and challenges in criminalization, in mutual legal assistance and in effective protection of witnesses and trafficking victims", to be held within the framework of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice;

27. *Invites* Member States and other donors to provide extrabudgetary resources for these purposes, in accordance with the rules and procedures of the United Nations;

28. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-fifth session on the implementation of the present resolution.



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Commission on Crime Prevention and Criminal Justice
Twenty-third session
Vienna, 12-16 May 2014
Agenda item 7
World crime trends and emerging issues and responses in the field of crime prevention and criminal justice

Croatia, Greece, Italy, Mexico, Peru, Sri Lanka and Turkey: revised draft resolution**

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the approval of the following draft resolution for adoption by the General Assembly:

International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences

The General Assembly,

Recalling its resolutions 66/180 of 19 December 2011 and 68/186 of 18 December 2013, entitled "Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking",

Recalling also the United Nations Convention against Transnational Organized Crime, adopted in its resolution 55/25 of 15 November 2000,[1] as well as the United Nations Convention against Corruption, adopted in its resolution 58/4 of 31 October 2003,[2]

Recalling further the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and

* Reissued for technical reasons on 19 May 2014.
** On behalf of the States Members of the United Nations that are members of the Group of 77 and China.
[1] United Nations, *Treaty Series*, vol. 2225, No. 39574.
[2] Ibid., vol. 2349, No. 42146.

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Cultural Organization on 14 November 1970,[3] the Convention on Stolen or Illegally Exported Cultural Objects, adopted by the International Institute for the Unification of Private Law on 24 June 1995,[4] and the Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14 May 1954,[5] and the two Protocols thereto, adopted on 14 May 1954[5] and 26 March 1999,[6] and other relevant conventions, and reaffirming the necessity for those States which have not done so to consider ratifying or acceding to and, as States parties, implementing those international instruments,

Alarmed at the growing involvement of organized criminal groups in all forms and aspects of trafficking in cultural property and related offences, and observing that illicitly trafficked cultural property is increasingly being sold through all kinds of markets, inter alia in auctions, in particular over the Internet, and that such property is being unlawfully excavated and illicitly exported or imported with the facilitation of modern and sophisticated technologies,

Recognizing the indispensable role of crime prevention and criminal justice responses in combating all forms and aspects of trafficking in cultural property and related offences in a comprehensive and effective manner,

Recalling the report of the Secretary-General on strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking,[7]

Welcoming the initiatives promoted within the United Nations crime prevention and criminal justice programme network and the cooperative network established among the United Nations Office on Drugs and Crime of the Secretariat, the United Nations Educational, Scientific and Cultural Organization, the International Criminal Police Organization (INTERPOL), the International Institute for the Unification of Private Law, the World Customs Organization and the International Council of Museums in the area of protection against trafficking in cultural property, and encouraging those entities to continue playing an active role in that area,

Recalling that the theme of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, to be held in Doha from 12 to 19 April 2015, will be "Integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation", and considering that one of the workshops to be held within the framework of the Congress will focus on strengthening crime prevention and criminal justice responses to evolving forms of crime such as cybercrime and trafficking in cultural property, including lessons learned and international cooperation,

Reiterating the significance of cultural property as part of the common heritage of humankind and as unique and important testimony of the culture and identity of peoples and the necessity of protecting cultural property, and reaffirming

[3] Ibid., vol. 823, No. 11806.
[4] Ibid., vol. 2421, No. 43718.
[5] Ibid., vol. 249, No. 3511.
[6] Ibid., vol. 2253, No. 3511.
[7] E/CN.15/2013/14.

in that regard the need to strengthen international cooperation in preventing, prosecuting and punishing all aspects of trafficking in cultural property,

Recognizing that, in its resolution 66/180, it requested the United Nations Office on Drugs and Crime, within its mandate, in consultation with Member States and in close cooperation, as appropriate, with the United Nations Educational, Scientific, and Cultural Organization, the International Criminal Police Organization (INTERPOL) and other competent international organizations, to further explore the development of specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property,

Recognizing also that, in its resolution 68/186, it welcomed the progress made in exploring the development of non-binding Guidelines on crime prevention and criminal justice responses with respect to trafficking in cultural property, stressed the need for their expeditious finalization, bearing in mind the importance of the matter for all Member States, and requested the United Nations Office on Drugs and Crime to reconvene the expert group on protection against trafficking in cultural property for Member States to review and revise the draft guidelines with a view to finalizing and submitting the draft guidelines to the Commission on Crime Prevention and Criminal Justice at its twenty-third session,

Recognizing further that the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, contained in the annex to the present resolution, can be considered by Member States in the development and strengthening of their policies, strategies, legislation and cooperation mechanisms to prevent and combat trafficking in cultural property and related offences in all situations,

1. *Welcomes* the work of the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 15 to 17 January 2014 to finalize the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences;

2. *Adopts* the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, contained in the annex to the present resolution, and underlines that those Guidelines represent a useful framework to guide Member States in the development and strengthening of their criminal justice policies, strategies, legislation and cooperation mechanisms in the area of protection against trafficking in cultural property and other related offences;

3. *Strongly encourages* Member States to apply the Guidelines to the maximum extent possible, where appropriate, in view of strengthening international cooperation in this field;

4. *Encourages* Member States to undertake efforts to overcome practical difficulties in the implementation of the Guidelines in their constant endeavour to combat trafficking in cultural property, in all situations and on the basis of common and shared responsibility;

5. *Strongly encourages* Member States to evaluate and review their legislation and legal principles, procedures, policies, programmes and practices related to crime prevention and criminal justice matters, in a manner consistent with

their legal systems and drawing upon the Guidelines, in order to ensure their adequacy for preventing and combating trafficking in cultural property and related offences;

6. *Invites* Member States and other relevant stakeholders attending the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice to discuss good practices and challenges in promoting international cooperation to combat trafficking in cultural property under workshop 3 (Strengthening crime prevention and criminal justice responses to evolving forms of crime such as cybercrime and trafficking in cultural property, including lessons learned and international cooperation);

7. *Requests* the United Nations Office on Drugs and Crime to continue to provide advisory services and technical assistance to Member States, upon request, in the area of crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences, in cooperation with relevant international organizations and making use of the work of the institutes of the United Nations crime prevention and criminal justice programme network, as appropriate;

8. *Also requests* the United Nations Office on Drugs and Crime to make the Guidelines widely available, including through the development of relevant tools, such as handbooks and training manuals;

9. *Further requests* the United Nations Office on Drugs and Crime, where appropriate, in consultation with Member States, to develop a practical assistance tool to assist in the implementation of the Guidelines, taking into consideration the technical background document developed for the elaboration of the Guidelines and the comments made by Member States;

10. *Invites* Member States to use all relevant tools developed by the United Nations Office on Drugs and Crime and the United Nations Educational, Scientific and Cultural Organization, including the Sharing Electronic Resources and Laws against Crime knowledge management portal (SHERLOC) and the United Nations Educational, Scientific and Cultural Organization database of national cultural heritage laws, and also invites Member States to provide to the Secretariat legislation and case law related to trafficking in cultural property, for inclusion in the portal;

11. *Also invites* Member States and other donors to provide extrabudgetary resources for those purposes, in accordance with the rules and procedures of the United Nations;

12. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-fifth session on the implementation of the present resolution.

Annex

International Guidelines for Crime Prevention and Criminal Justice Responses with respect to Trafficking in Cultural Property and Other Related Offences

Introduction

1. The guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences have been developed in recognition of the criminal character of such offences and their devastating consequences for the cultural heritage of humankind. Pursuant to General Assembly resolutions 66/180 and 68/186 and Economic and Social Council resolution 2010/19, draft guidelines were developed by the United Nations Office on Drugs and Crime (UNODC) in consultation with Member States and in close cooperation, as appropriate, with the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Criminal Police Organization (INTERPOL) and other competent international organizations.

2. The first draft of the guidelines was reviewed at an informal expert group meeting, held from 21 to 23 November 2011, composed of 20 experts from around the world, with expertise in various fields related to the subject matter of the guidelines, including representatives of INTERPOL, UNESCO and the International Institute for the Unification of Private Law (Unidroit). Based on the valuable comments and advice on improving the draft, a second draft was presented to and discussed by the intergovernmental expert group on protection against trafficking in cultural property in its second meeting, held from 27 to 29 June 2012. Taking into account a compendium, prepared by the Secretariat, of comments made by Member States on the draft guidelines, the intergovernmental expert group reviewed and revised the guidelines at its third meeting, held from 15 to 17 January 2014, with a view to their finalization.

3. The guidelines are based on crime prevention and criminal justice aspects of protection against trafficking in cultural property, taking into consideration a review of current practices and initiatives in several countries in addressing the problem of trafficking in cultural property, as well as principles and norms arising from the analysis of the following international legal instruments: the United Nations Convention against Transnational Organized Crime of 2000; the United Nations Convention against Corruption of 2003; the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; the Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1999; the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts of 1977 (Additional Protocol I); the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970; the Unidroit Convention on Stolen or Illegally Exported Cultural Objects of 1995 and the Convention on the Protection of the Underwater Cultural Heritage of 2001.

4. This set of non-binding guidelines is available to Member States for their consideration in the development and strengthening of crime prevention and criminal justice policies, strategies, legislation and cooperation mechanisms to prevent and combat trafficking in cultural property and related offences in all

situations. Their development follows the expression, by the General Assembly and the Economic and Social Council in their resolutions, of alarm at the growing involvement of organized criminal groups in all forms and aspects of trafficking in cultural property and related offences, and of the need to promote international cooperation to combat crime in a concerted manner.

5. The guidelines have the purpose of serving as a reference for national policymakers and as a tool for capacity-building in the area of crime prevention and criminal justice responses to trafficking in cultural property and related offences, in coordination with UNESCO and other competent international organizations, as appropriate. On the basis of the guidelines finalized by the intergovernmental expert group and submitted to the Commission on Crime Prevention and Criminal Justice, and taking into consideration the technical background document containing the version of the guidelines dated April 2012, and the comments made by Member States, the Commission may ask the Secretariat to develop a practical assistance tool, as appropriate, to aid in the implementation of the guidelines.

6. The guidelines contain four chapters:

(a) Chapter I contains guidelines on crime prevention strategies (including information and data collection, the role of cultural institutions and the private sector, the monitoring of the cultural property market, imports and exports, and archaeological sites, as well as education and public awareness);

(b) Chapter II contains guidelines on criminal justice policies (including adherence to and implementation of relevant international treaties, the criminalization of specific harmful conduct or the establishment of administrative offences, corporate liability, seizure and confiscation and investigative measures);

(c) Chapter III contains guidelines on international cooperation (including matters related to jurisdictional basis, extradition, seizure and confiscation, cooperation among law enforcement and investigating authorities, as well as the return, restitution or repatriation of cultural property);

(d) Chapter IV contains a guideline on the scope of application of the guidelines.

I. Prevention strategies

A. Information and data collection

Guideline 1. States should consider establishing and developing inventories or databases, as appropriate, of cultural property for the purpose of protection against its trafficking. The absence of registration of cultural property in such inventories shall by no means exclude it from protection against trafficking and related offences.

Guideline 2. States should consider, where possible under their domestic legislation, the relevant cultural property as registered in the official inventory of a State that has enacted laws on national or State ownership, provided that the owner State has issued a public formal statement to that effect.

Guideline 3. States should consider:

(a) Introducing or improving statistics on import and export of cultural property;

(b) Introducing or improving statistics, where practical, on administrative and criminal offences against cultural property;

(c) Establishing or improving national databases, as appropriate, on trafficking in cultural property and related offences and on trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded or missing cultural property;

(d) Introducing mechanisms to enable the reporting of suspicious dealings or sales on the Internet;

(e) Contributing to international data collection on trafficking in cultural property and related offences through the United Nations Survey on Crime Trends and Operations of Criminal Justice Systems, conducted by UNODC and the INTERPOL database on stolen works of art and through other relevant organizations;

(f) Contributing to the UNESCO database of national laws and regulations pertaining to cultural property.

Guideline 4. States should consider, as appropriate, establishing a central national authority or empowering an existing authority, and/or enact other mechanisms, for coordinating the activities related to the protection of cultural property against trafficking and related offences.

B. The role of cultural institutions and the private sector

Guideline 5. States should consider encouraging cultural institutions and the private sector to adopt codes of conduct and to disseminate best practices on policies on the acquisition of cultural property.

Guideline 6. States should encourage cultural institutions and the private sector to report suspected trafficking in cultural property cases to law enforcement authorities.

Guideline 7. States should consider promoting and supporting training on cultural property regulations for cultural institutions and the private sector, in cooperation with relevant international organizations, including, inter alia, rules on the acquisition of cultural property.

Guideline 8. States should encourage, as appropriate, Internet providers and web-based auctioneers and vendors to cooperate in preventing trafficking in cultural property, including through the adoption of specific codes of conduct.

C. Monitoring

Guideline 9. States should consider, in accordance with the relevant international instruments, introducing and implementing appropriate import and export control procedures, such as certificates for the export and import of cultural property.

Guideline 10. States should consider creating and implementing monitoring measures for the market of cultural property, including for the Internet.

Guideline 11. States should, where possible, create and implement programmes for research, mapping and surveillance of archaeological sites for the purpose of protecting them against pillage, clandestine excavations and trafficking.

D. Education and public awareness

Guideline 12. States should consider supporting and promoting public awareness campaigns, including through the media, to foster among the general public a culture of concern about trafficking in cultural property for the purpose of protecting that cultural property against pillage and trafficking.

II. Criminal justice policies

A. International legal texts

Guideline 13. States should consider adopting legislation criminalizing trafficking in cultural property and related offences in accordance with applicable existing international instruments, in particular the Organized Crime Convention, relating to trafficking in cultural property and related offences.

Guideline 14. In bilateral cooperation, States may consider making use of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.[a]

B. Criminal and administrative offences

Guideline 15. States should consider defining the concept of "cultural property", including movable and immovable cultural property, when necessary, for the purposes of criminal law.

Guideline 16. States should consider criminalizing, as serious offences, acts, inter alia, such as:

(a) Trafficking in cultural property;

(b) Illicit export and illicit import of cultural property;

(c) Theft of cultural property, or elevating the offence of ordinary theft to a serious offence when it involves cultural property;

(d) Looting of archaeological and cultural sites, and/or illicit excavation;

(e) Conspiracy or participation in an organized criminal group for trafficking in cultural property and related offences;

(f) Laundering, as referred to in article 6 of the Organized Crime Convention, of trafficked cultural property.

Guideline 17. States should consider introducing in their criminal legislation other offences, such as damaging or vandalizing cultural property and the acquisition,

[a] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.1, annex.

with conscious avoidance of the legal status, of trafficked cultural property, when such offences are related to trafficking in cultural property.

Guideline 18. States should consider introducing obligations, as appropriate, to report suspected cases of trafficking of and related offences against cultural property, and to report the discovery of archaeological sites, archaeological finds or other objects of relevant cultural interest and, for those States that have done so, to criminalize the failure to meet those obligations.

Guideline 19. States should consider making it possible, in a way not contradictory to their fundamental legal principles, to infer a perpetrator's knowledge that an object has been reported as trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded, on the basis of objective factual circumstances, including, inter alia, when the cultural property is registered as such in a publicly accessible database.

C. Criminal and administrative sanctions

Guideline 20. States should consider providing proportionate, effective and dissuasive sanctions for the above-mentioned criminal offences.

Guideline 21. States may consider adopting custodial sanctions for some selected criminal offences so as to meet the standard, required under article 2 (b) of the Organized Crime Convention, for "serious crime".

Guideline 22. States should consider adopting bans, disqualifications and the revocation of licences as complementary criminal or administrative sanctions whenever possible.

D. Corporate liability

Guideline 23. States should consider introducing or extending liability (criminal, administrative or civil in nature) of corporations or legal persons for the

above-mentioned offences.

Guideline 24. States should consider introducing proportionate, effective and dissuasive sanctions for corporate offences of trafficking in cultural property and related offences, including fines, bans or disqualifications, the revocation of licences, and the revocation of benefits, including tax exemptions or government subsidies where possible.

E. Seizure and confiscation

Guideline 25. States should consider introducing criminal investigation and the search, seizure and confiscation of trafficked cultural property, as well as the proceeds of crimes related to such trafficking, and ensure its return, restitution or repatriation.

Guideline 26. States should consider, in a way not contradictory to their fundamental legal principles, the possibility of requiring that the alleged offender, the owner or the holder (if different) demonstrate the lawful origin of cultural property liable to seizure or confiscation for trafficking or related offences.

Guideline 27. States should consider introducing confiscation of the proceeds of the offence or of property of a value equivalent to such proceeds.

Guideline 28. States may consider using confiscated economic assets for financing expenses for recovery and other prevention measures.

F. Investigations

Guideline 29. States should consider creating specialized law enforcement bodies or units for trafficking in cultural property and related offences, as well as providing specialized training for customs officials, law enforcement personnel and public prosecutors.

Guideline 30. States should consider enhancing coordination, at both the national and international levels, among law enforcement bodies in order to increase the probability of discovering and successfully investigating trafficking in cultural property and related offences.

Guideline 31. States may consider, in the investigation of the above-mentioned offences, especially if related to organized crime, allowing for the appropriate use by their competent authorities of controlled delivery and other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within their territory, and to allow for the admissibility in court of evidence derived therefrom.

III. Cooperation

A. Jurisdiction

Guideline 32. States should consider establishing their jurisdiction over the above-mentioned criminal offences when such offences are committed within their territory or when committed outside their territory by one of their nationals, in a manner consistent with the principles of sovereign equality, the territorial integrity of States and the non-intervention in the domestic affairs of other States, as enshrined in the Charter of the United Nations and the Organized Crime Convention.

B. Judicial cooperation in criminal matters

Guideline 33. States that have not yet done so should consider becoming parties to existing international law instruments, in particular the Organized Crime Convention, and use them as a basis for international cooperation in criminal matters in respect of trafficking in cultural property and related offences.

Guideline 34. States should consider providing each other with the widest possible mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the above-mentioned offences, also in order to enhance the effectiveness and speed of the procedures.

Guideline 35. States should contribute to and regularly update the UNESCO database of national cultural heritage laws and any other relevant database.

C. Extradition

Guideline 36. States should consider making the crimes against cultural property enumerated in guideline 16 extraditable offences. In the context of extradition procedures, States should also consider adopting and applying, where possible, provisional measures to preserve the cultural property related to the alleged offence for the purpose of restitution.

Guideline 37. States should consider enhancing the effectiveness and speed of extradition for trafficking in cultural property and related offences, where such offences are considered extraditable.

Guideline 38. States should consider, in the case of refusal of extradition only on the basis of nationality, submitting, when requested by the State that had sought extradition, the case to the competent authority in order to consider prosecution.

D. International cooperation for purposes of seizure and confiscation

Guideline 39. States should consider cooperating in identifying, tracing, seizing and confiscating trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property.

Guideline 40. States may consider putting in place mechanisms to enable the contribution of confiscated financial assets to international or intergovernmental bodies concerned with the fight against transnational organized crime, including trafficking in cultural property and related offences.

E. International cooperation among law enforcement and investigating authorities

Guideline 41. States should consider enhancing the exchange of information on trafficking in cultural property and related offences by sharing or interconnecting inventories of cultural property and databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property, and/or contributing to international ones.

Guideline 42. States should consider, where appropriate, in the framework of international judicial cooperation, enhancing the exchange of information on previous convictions and ongoing investigations of trafficking in cultural property and related offences.

Guideline 43. States should consider concluding bilateral or multilateral agreements or arrangements in order to establish joint investigative teams for trafficking in cultural property and related offences.

Guideline 44. States should consider assisting each other in planning and implementing specialized training programmes for law enforcement personnel.

Guideline 45. States should consider enhancing or establishing privileged channels of communication between their law enforcement agencies.

F. Return, restitution or repatriation

Guideline 46. States should consider, in order to enhance international cooperation in criminal matters, undertaking appropriate measures to recover trafficked, illicitly

exported or imported, stolen, looted or illicitly excavated or illicitly traded cultural property for the purpose of their return, restitution or repatriation.

Guideline 47. States should consider pondering, procedurally, as appropriate, the owner State's provisions on national or State ownership in order to facilitate the return, restitution or repatriation of public cultural property.

IV. Scope of application

Guideline 48. States should consider applying the guidelines in any situation, including exceptional circumstances, that foster trafficking in cultural property and related offences, in the framework of the above-mentioned conventions and other relevant international instruments.

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Agenda item 7
World crime trends and emerging issues and responses in the field of crime prevention and criminal justice

Norway, Peru and United States of America: revised draft resolution

Strengthening a targeted crime prevention and criminal justice response to combat illicit trafficking in forest products, including timber

The Commission on Crime Prevention and Criminal Justice,

Reaffirming its resolution 16/1 of 27 April 2007, entitled "International cooperation in preventing and combating illicit international trafficking in forest products, including timber, wildlife and other forest biological resources", in which, inter alia, the Commission strongly encouraged Member States to cooperate at the bilateral, regional and international levels to prevent, combat and eradicate illicit international trafficking in forest products, including timber, wildlife and other forest biological resources, where appropriate, through the use of international legal instruments such as the United Nations Convention against Transnational Organized Crime[1] and the United Nations Convention against Corruption,[2]

Recognizing the role of the Convention on International Trade in Endangered Species of Wild Fauna and Flora[3] as the principal international instrument for ensuring that international trade in specimens of wild animals and plants does not threaten their survival, and also recognizing the efforts made to implement that Convention by the parties thereto,

Recalling General Assembly resolution 62/98 of 17 December 2007, by which the Assembly adopted the non-legally binding instrument on all types of forests,

[1] United Nations, *Treaty Series*, vol. 2225, No. 39574.
[2] Ibid., vol. 2349, No. 42146.
[3] Ibid., vol. 993, No. 14537.

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contained in the annex to that resolution, in particular paragraphs 7 (h), (i) and (j) of the instrument,

Recalling also Economic and Social Council resolution 2008/25 of 24 July 2008, in which the Council encouraged Member States to continue to provide the United Nations Office on Drugs and Crime with information on measures taken pursuant to Commission on Crime Prevention and Criminal Justice resolution 16/1, taking into consideration, inter alia, the need for holistic and comprehensive national multisectoral approaches to preventing and combating illicit international trafficking in forest products, including timber, wildlife and other forest biological resources, as well as for international coordination and cooperation in support of such approaches, including through technical assistance activities to build the capacity of relevant national officials and institutions,

Recalling further the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, adopted by the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, in which the States Members of the United Nations acknowledged the challenge posed by emerging forms of crime that have a significant impact on the environment, encouraged Member States to strengthen their national crime prevention and criminal justice legislation and invited them to enhance international cooperation, technical assistance and the sharing of best practices in that area, and invited the Commission on Crime Prevention and Criminal Justice to study the nature of the challenge and ways to deal with it effectively,

Recalling Economic and Social Council resolution 2011/36 of 28 July 2011, in which the Council invited Member States to consider making illicit trafficking in endangered species of wild fauna and flora a serious crime, in accordance with their national legislation and article 2, paragraph (b), of the Organized Crime Convention, especially when organized criminal groups are involved,

Emphasizing Economic and Social Council resolution 2012/19 of 26 July 2012, in which the Council urged Member States to consider, among other effective measures, in accordance with their national legal systems, addressing different forms and manifestations of transnational organized crime that have a significant impact on the environment, including trafficking in endangered species of wild fauna and flora,

Reaffirming Economic and Social Council resolution 2013/40 of 25 July 2013, in which the Council encouraged Member States to make illicit trafficking in protected species of wild fauna and flora involving organized criminal groups a serious crime, as defined in article 2, paragraph (b), of the Organized Crime Convention, in order to ensure that adequate and effective means of international cooperation could be afforded under the Convention in the investigation and prosecution of those engaged in illicit trafficking in protected species of wild fauna and flora,

Reaffirming also that in its resolution 68/193 of 18 December 2013, the General Assembly emphasized that coordinated action was critical to eliminate corruption and disrupt the illicit networks that drive and enable trafficking in wildlife, timber and timber products harvested in contravention of national laws,

Recalling that, in that same resolution, the General Assembly strongly encouraged Member States to take appropriate measures, consistent with their domestic legislation and legal frameworks, to strengthen law enforcement and related efforts to combat individuals and groups, including organized criminal groups, operating within their borders, with a view to preventing, combating and eradicating international trafficking in wildlife, forest products, including timber, and other forest biological resources harvested in contravention of national laws and relevant international instruments,

Recognizing that efforts to prevent and address illicit trafficking in forest products, including timber, should take into consideration and involve, where applicable, supply, transit, production and demand,

Recognizing also that efforts to prevent and address illicit trafficking in forest products, including timber, should take into consideration the need for alternative sustainable livelihoods,

Mindful of the need to address illicit trafficking in forest products, including timber, which contributes to deforestation and forest degradation, which in turn have an adverse impact on biodiversity, climate, livelihoods of forest-dependent communities and sustainable development,

Recognizing that the need to strengthen collective efforts in preventing and combating transnational organized crime, money-laundering and corruption is critical, as they can facilitate, in some cases, illicit trafficking in forest products, including timber,

Conscious of the need to promote initiatives to encourage legal trade by countering illicit trafficking in forest products, including timber,

Acknowledging the crucial role played by all relevant stakeholders, including civil society, in particular local communities, in combating illicit trafficking in forest products, including timber,

1. *Encourages* Member States to make illicit trafficking in forest products, including timber, involving organized criminal groups a serious crime, as defined in article 2, paragraph (b), of the United Nations Convention against Transnational Organized Crime,[4] where appropriate, in order to ensure that adequate and effective means of international cooperation can be afforded under the Convention in the investigation and prosecution of those engaged in illicit trafficking in forest products, including timber;

2. *Also encourages* Member States to undertake and promote bilateral, regional, subregional and international law enforcement cooperation, including, subject to national legislation, cooperation between law enforcement agencies, through joint investigations, including joint cross-border investigations, and the exchange of information, inter alia, information on legislation and law enforcement intelligence, to prevent and counter illicit trafficking in forest products, including timber, thereby promoting the sustainable management and conservation of forests;

[4] Ibid., vol. 2225, No. 39574.

3. *Strongly encourages* Member States to develop and implement, where necessary and consistent with international obligations, domestic and regional policies aimed at countering illicit trafficking in forest products, including timber;

4. *Encourages* Member States to strengthen, where necessary and appropriate, their domestic legal frameworks and law enforcement and judicial capacity, consistent with their international obligations and national legislation, to ensure that relevant legislation, including criminal laws, are available to tackle illicit trafficking in forest products, including timber;

5. *Strongly encourages* Member States to adopt adequate and effective measures, including, where appropriate, criminal laws and deterrent penalties, to prevent and combat illicit trafficking in forest products, including timber;

6. *Requests* Member States to take full advantage of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption,[5] in appropriate cases, to prevent and combat illicit trafficking in forest products, including timber, and in that regard calls upon Member States that have not done so to consider becoming parties to those Conventions and calls for their full and effective implementation by States parties;

7. *Acknowledges* the efforts of the United Nations Office on Drugs and Crime, in coordination with other members of the International Consortium on Combating Wildlife Crime, to support Member States in the implementation of the *Wildlife and Forest Crime Analytic Toolkit* aimed at strengthening, where appropriate, the capacity of relevant forest law enforcement authorities and judiciaries in investigating, prosecuting and adjudicating forest-related offences, and requests the Office to continue providing support to the Member States, upon request, in the application of the *Toolkit*;

8. *Invites* the United Nations Office on Drugs and Crime, in coordination with other United Nations bodies and intergovernmental organizations, as appropriate and within their respective mandates, to promote enforcement related to illicit trafficking in forest products, including timber, and addressing its impact on sustainable development;

9. *Also invites* the United Nations Office on Drugs and Crime to work with Member States and other relevant United Nations bodies to identify good practices in the area of criminal law related to illicit trafficking in forest products, including timber;

10. *Further invites* the United Nations Office on Drugs and Crime to consider cooperation with member organizations of the Collaborative Partnership on Forests to promote effective forest law enforcement and governance, including by strengthening the development of tools and technologies for addressing illicit trafficking in forest products, including timber, inviting Member States to strengthen sustainable economic alternatives as an approach to preventing and combating illicit trafficking in forest products, including timber, and strengthening support for existing instruments and programmes such as the Thematic Programme

[5] Ibid., vol. 2349, No. 42146.

on Forest Law Enforcement, Governance and Trade of the International Tropical Timber Organization;

11. *Encourages* the United Nations Office on Drugs and Crime, in consultation with Member States and in cooperation with relevant intergovernmental organizations, to continue to provide technical assistance and training to prevent and combat illicit trafficking in forest products, including timber, and to promote the development of tools and technologies to enhance the detection, interdiction and prosecution of such crimes, in accordance with the rules and procedures of the United Nations;

12. *Requests* the United Nations Office on Drugs and Crime, in consultation with concerned Member States and in cooperation with relevant intergovernmental organizations, to undertake research that focuses on organized criminal networks involved in illicit trafficking in forest products, including timber, and invites Member States to contribute, on a voluntary basis, to such research;

13. *Invites* Member States and other donors to provide extrabudgetary contributions for such purposes, in accordance with the rules and procedures of the United Nations;

14. *Requests* the Executive Director of the United Nations Office on Drugs and Crime to report on the implementation of the present resolution to the Commission on Crime Prevention and Criminal Justice at its twenty-fifth session.